STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-580

April 25, 2000

MAINE PUBLIC UTILITIES COMMISSION
Investigation of Central Maine Power Company's Revenue Requirements And Rate Design (Phase II-B)

ORDER ACCEPTING STIPULATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

By way of this Order, we approve a Stipulation entered into among Central Maine Power Company (CMP or Company), the Office of the Public Advocate (OPA) and the Industrial Energy Consumers Group (IECG) which would allow CMP to defer with carrying costs the capacity payments CMP is required to make to Cinergy as a result of the restructuring of two QF contracts. CMP inadvertently omitted the Cinergy capacity payments from its stranded cost calculation during Phase II-B. For the period March 1, 2000 through February 28, 2001, the required capacity payment is $3,375,000 and for the period March 1, 2001 through February 28, 2002 the required payment is $3,465,000.

II. POSITIONS BEFORE THE COMMISSION

On January 25, 2000, CMP, the OPA and the IECG entered into a Stipulation which resolved all remaining issues in this case and established T&D revenue requirements and stranded costs for CMP for the period beginning March 1, 2000, the start of retail access to generation services in Maine. On January 27, 2000, the Commission deliberated and accepted the Stipulation.[1]

On February 11, 2000, CMP filed a Motion to Correct Calculational Error. To allow the Commission an adequate opportunity to review the Company's Motion, the Hearing Examiner, in a Procedural Order dated March 1, 2000, waived the provisions of Section 1004 of the Commission's Rules of Practice and Procedure which require the Commission to act upon a motion to modify a decision within 20 days or such motion is deemed denied.

In its Motion, CMP noted that it had recently discovered an error in the computation of stranded costs in its Phase II-B filing. The stranded costs in CMP's Phase II-B filing were ultimately used as the basis for the stranded cost amount contained in the January 25, 2000 Stipulation. Specifically, according to CMP, it had unintentionally omitted the capacity payments due from CMP to Cinergy under two restructured QF contracts. In its Motion the Company argued that:

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[1]The Commission's written Order accepting the Phase II-B Stipulation was issued on February 24, 2000.

> Given the status of implementation of T&D rates for March 1, it is wholly impracticable to change rates in time to correct this error and, to provide CMP the fair opportunity to recover stranded costs that has been permitted throughout this case. We respectfully request that the increased stranded costs be recovered through a commensurate increase in the amortization of the Asset Sale Gain Account ("ASGA"). Such a solution will not be harmful to ratepayers and will be fair to CMP by providing recovery of legitimate stranded costs.

At a March 10, 2000 technical conference, the Company clarified that it was not asking to increase revenue requirements further to reflect the increase in rate base resulting from the increased ASGA amortization.

On March 10, 2000, the Independent Energy Producers of Maine (IEPM) filed an objection to CMP's motion on the grounds that it was "extremely untimely" and raised both calculational and policy issues. The OPA also filed an objection in which it states that it opposed the Company's motion since it amounted to a last-minute update and single-issue adjustment not permitted under past Commission precedent. Nonetheless, the OPA recommended that CMP be allowed to defer the under-collected Cinergy capacity costs for consideration at the next time CMP's stranded costs are calculated.

On March 30, 2000, CMP responded to the filings of the OPA and the IEPM. In its response, CMP noted that it did not expect the recoverability of the omitted capacity costs to be challenged in a subsequent proceeding and therefore, did not object to the OPA's suggestion that these costs be deferred, along with carrying costs. In response to the IEPM's arguments, CMP argued that the proposed change was to correct a calculational error and, that were it not for the Company's inadvertent error, these costs would have been included in the stranded cost revenue requirement. On March 31, 2000, the Company filed a letter stating that, based on questions from the Advisory Staff, the Company discovered that it had not properly stated the capacity costs payable to Cinergy in its original motion. The correct amounts were $3,375,000 for the period March 2000 through February 2001, and $3,465,000 for the period March 2001 through February 2002.[2]

A hearing on this matter was held on April 4, 2000. At that time, the OPA indicated that, although it recommended that the Cinergy capacity payment amounts be deferred rather than recovered as proposed by CMP in its motion, it did not intend to challenge the recoverability of the deferred costs at a later time. The OPA also indicated that if the costs were deferred, it agreed with CMP that carrying costs should be included. When asked to explain this position given the fact that CMP's motion did not request carrying costs, the OPA responded that it was not aware of that aspect of

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[2]CMP's original motion indicated that the capacity costs payable to Cinergy were $3,357,000 for the period March 2000 through February 2001, and $3,376,000 for the period March 2001 through February 2002.

CMP's motion. At the hearing, counsel for CMP stated that at the time the Company filed its motion it had not thought through the carrying cost issue, but after reviewing the OPA's opposition it agreed that the fairest solution to the problem was to defer the costs, as suggested by the OPA, with carrying costs. Upon questioning from the Bench, counsel for CMP attempted to explain apparent inconsistencies in CMP's position. Counsel confirmed that at the March 10th technical conference CMP had indeed stated that it was aware that its motion did not seek an increase to reflect the rate base effect of accelerating the ASGA amortization. Counsel further confirmed that CMP had stated that this was a benefit the Company was willing to confer upon ratepayers. According to CMP's counsel, however, the Company had changed its position since that time.[3]

On April 5, 2000, we received a Stipulation signed by the Company, the OPA and the IECG.[4] Under the terms of the Stipulation, the parties agree that CMP should be authorized to defer with carrying costs the capacity payments to Cinergy as stated in its amended filing of $3,375,000 for the period March 1, 2000 through February 28, 2001, and $3,465,000 for the period March 1, 2001 through February 28, 2002. The parties further agree that CMP would be allowed to recover these deferred costs at the next time stranded cost rates are set.

III. DECISION

There does not seem to be any question that the Company's motion is intended solely to correct a calculational error and does not represent a change in Company position. Nor can the Company's motion be seen as an attempt to raise a new issue which should have been raised during the course of the case, since it is clear that had the Company not omitted the capacity cost payments to Cinergy in its Phase II-B filing, such costs would have been included in stranded costs pursuant to 35-A M.R.S.A. § 3208.

Despite the rather straight-forward nature of the Company's motion, the proceeding on this motion has been unusual. Specifically, we are faced with a situation in which the OPA's "opposition" to the Motion was more favorable to the Company than the position originally set forth by the Company in its own Motion and then reaffirmed by the Company at the technical conference. Given the OPA's position, the Company amended its original position to agree with the OPA and support an outcome more favorable to CMP's shareholders than the Company had originally requested.

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[3] At the deliberation of this matter on April 6, 2000, the Commission directed CMP to file a letter explaining the apparent inconsistencies in its representation of its position. On April 13, 2000, CMP's General Counsel submitted a letter that set forth the facts concerning why it did not initially request recovery of the carrying cost effect of its proposed correction, and why it later changed its position. The letter does not explain, however, why CMP did not state either in its March 30th filing or at the April 4th hearing that its previously-described position had changed until questioned by the Bench.

[4] The IEPM neither signed nor indicated an opposition to the Stipulation.

We have been requested to approve a stipulation which adopts the OPA's position. Based on the statements of the Company at the hearing, were we to reject the stipulation and grant the Company's motion, ratepayers would be better off by approximately $600,000. Although this outcome would be reasonable, on an overall basis we are persuaded to accept the Stipulation for two reasons. First, the Stipulation has been signed by all parties to the original Phase II-B Stipulation. Second, and more important, the outcome suggested by the Stipulation, although not as beneficial to ratepayers as the Company's Motion, places both ratepayers and the Company in the same position as they would have been in had CMP not made the inadvertent error in calculating its stranded costs. For this reason, the resolution presented in the Stipulation is one that we would have found acceptable had the Company itself originally proposed it. Our acceptance of this Stipulation should in no way be interpreted as a precedent which would allow parties to raise substantive issues for the first time in a post-decision motion.

Accordingly, it is

O R D E R E D

That the Stipulation submitted by the parties on April 5, 2000 in this proceeding, a copy of which is attached hereto, is approved and the terms of such Stipulation are incorporated by reference herein.

Dated at Augusta, Maine, this 25th day of April, 2000.

BY ORDER OF THE COMMISSION

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Raymond J. Robichaud
Acting Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.